IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5114 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JIVAN SADHNA TRUST AT BAMANGAM

Versus

STATE OF GUJARAT

Appearance: 1. Special Civil Application No. 5114 of 1994
MR JITENDRA M PATEL for Petitioner No. 1
MR PR ABICHANDANI AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

Date of decision: 18/08/2004

ORAL JUDGEMENT

#. The petitioner-Trust is running Uttar Buniyadi School and Anant Ashram Shala. In Ashram Shala there are 1 to 7 Standards having 124 students staying in it. Whereas, in Uttar Buniyadi School, in standard 8 and 9 there were about 59 students.

#. On 28.4.1988 land bearing survey No.161 admeasuring 3 acres 14 gunthas was given to the petitioner on years lease for the purpose of Uttar Buniyadi School and the land bearing survey No.65 admeasuring 4 acres was given for a period of 5 years on 29.3.1988. Whereas, land bearing survey No.65 admeasuring 2 acres was given for a period of 5 years from 19.3.1988 and land bearing survey no.66 admeasuring 6 acres 1 guntha was given to the school by the State Government by order dated 17.7.1987 for a period of 2 years i.e. up to 31.7.1989. Land bearing survey No.40 admeasuring 10 acres 18 gunthas was given to the trust for the purpose of forestation for growing more trees.

#. It is the case of the petitioner trust that all the aforesaid lands were given to it in 1979 and since then lease was renewed from time to time by the State Government. However, for the first time when the petitioner-Trust applied for renewing the lease of survey No.66 admeasuring 6 acres 1 gunthas of land, the same was rejected by the Collector by his impugned order dated 12.6.1991 (Annexure-A) only on the ground that more than 10 acres of land was given to it and hence its application for renewal of lease was rightly rejected on 22.4.1991. If it has any grievance, then it can file appeal before the competent authority against the said order. Aggrieved of this the petitioner had approached the State Government by way of revision application under Section 211 of the Bombay Land Revenue Code, which was dismissed on 9.9.1993 (Annexure-B). Hence, this petition.

#. Learned counsel Mr.Patel for the petitioner-Trust is in possession of the land in question since 1979 and since then it has developed and nourished the said lands for a period of more than two decades. He submitted that it was not proper on the part of the learned Collector to reject its application for renewal of lease deed on the ground that maximum land of 10 acres can be granted to the Uttar Buniyadi School. Mr.Patel submitted that considering the averments made in the petition, initially on 7.4.94 learned Single Judge of this court while issuing notice to the other side granted status quo regarding the possession of the land in question and, thereafter, the matter was admitted on 25.7.1995 and ad-interim relief granted earlier was ordered to be continued till further orders. Thus, under the interim orders of the court, the petitioner-Trust has remained in possession of the land in question. He, therefore, submitted that after a period of more than 25 years, if the possession of the land in question is taken away by

the State Government, then it would be a traversety of justice.

#. On merits, Mr.Patel submitted that from the impugned order at Annexure-A passed by the Collector, it is clear that without affording any opportunity of personal hearing, the Collector has passed the impugned order. The averments made in the petition to that effect have remained uncontroverted because though served on the other side no affidavit-in-reply has been filed by the respondents. He, therefore, submitted that when the impugned order at Annexure-A is vitiated then subsequent order passed by the State Government at Annexure-B has to be quashed and set aside by this Hon'ble Court.

#. Having heard learned counsel Mr.Patel for the petitioner and learned AGP, Mr.P.R.Abichandani for the respondent and having carefully gone through the averments made in this petition as well as the impugned orders at Annexure-A and Annexure-B passed by the authorities, it is clear that the learned Collector has passed the impugned order at Annexure-A without affording an opportunity of personal hearing to the petitioner, therefore, on that ground this petition is required to be allowed by quashing and setting aside the impugned order at Annexure-A dated 12.6.1991 passed by the Collector. Once, that order is quashed and set aside, then obviously subsequent order at Annexure-B passed by the State Government in revision has to be quashed and set aside.

#. Accordingly, this petition is allowed and the impugned orders at Annexure-A and Annexure-B passed by the respondent authorities are hereby quashed and set aside and the learned Collector, Kheda is directed to reconsider the application for renewal of the petitioner-Trust and decide the same in accordance with law, after extending an opportunity of personal hearing to the petitioner and till then the possession of the lands in question of the petitioner shall not be disturbed. Accordingly, rule is made absolute with no order as to costs.

(B.J.Shethna, J.)

*Pvv